

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

October 5, 2018 through October 11, 2018

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

CANGRO v REITANO:

1ST Dept. App. Div. order of 7/19/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Dismissal and Nonsuit--Dismissal of Complaint--Frivolous motion practice;

Supreme Court, New York County, denied, as frivolous, plaintiff's motion for an award of damages and sanctions and to direct defendant to undergo a psychiatric evaluation, and dismissed the action with prejudice; App. Div. affirmed.

COOK (TYRELL), PEOPLE v:

1ST Dept. App. Div. order of 5/31/18; affirmance; leave to appeal granted by Rivera, J., 9/25/18;

Crimes--Suppression Hearing--Whether trial court properly reopened a suppression hearing, before rendering a decision, to permit the People to call an officer with additional information tending to establish reasonable suspicion for defendant's detention; Legal Sufficiency—whether the evidence was legally sufficient to establish that the victim suffered a physical injury; Right to a Fair Trial—whether defendant was denied his right to a fair trial based on alleged juror misconduct; Supreme Court, Bronx County, convicted defendant of attempted robbery in the first degree and assault in the second degree; App. Div. affirmed.

DEUTSCHE BANK NATIONAL TRUST COMPANY v BARCLAYS BANK;

DEUTSCHE BANK NATIONAL TRUST v HSBC BANK USA:

1ST Dept. App. Div. order of 12/5/17; reversal; leave to appeal granted by Court of Appeals, 9/18/18;

Limitations of Actions--What Statute Governs--Whether plaintiff trustee's breach of contract claims were barred by California's four-year statute of limitations, pursuant to the borrowing statute of CPLR 202; defendant banks alleged to have breached representations and warranties made in connection with the sale of residential mortgage-backed securities pooled in trust; whether claim accrued in California or New York;

Supreme Court, New York County, denied each defendant's motion to dismiss the surviving cause of action for breach of contract on the ground of the statute of limitations; App. Div. reversed and granted the motions to dismiss.

MATTER OF THE ESTATE OF GIAQUINTO (JOHNSON v FARINA):

3RD Dept. App. Div. order of 9/13/18; affirmance; Rule 500.11 review pending;

Wills--Execution--Whether respondent, objectant to a will, raised a triable issue of fact as to whether decedent lacked testamentary capacity to execute will;

Surrogate's Court, Schenectady County, admitted to probate an instrument purporting to be the last will and testament of decedent; thereafter, denied respondent's motion to set aside the verdict; App. Div. affirmed.

JOHNSON, PEOPLE ex rel. v SCHIFF &c.:

3RD Dept. App. Div. order of 8/10/18; denial of writ of habeas corpus; sua sponte examination whether the proceeding has become moot and whether any basis exists for an appeal as of right;

Habeas Corpus--When Remedy Available--Whether petitioner is entitled to habeas corpus relief;

App. Div., among other things, denied the application for a writ of habeas corpus.